

THE ELECTRONIC BATTLEFIELD AND THE DICTATES OF THE PUBLIC CONSCIENCE

THE RAMIFICATIONS OF THE U.S. « VIETNAMIZATION » POLICY

by

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In Spring 1967, over half a decade ago, a man who himself belonged to the American " Establishment " observed that there was a « widely and strongly held » feeling in the USA « that the " Establishment " is out of its mind... and that we are carrying the thing (the Vietnam war) to absurd lengths »¹.

By early 1968, public revulsion reached such proportions as to cause President Johnson virtually to abdicate.

Since 1969 — during the Nixon Administration — the situation has become increasingly paradoxical, not to say schizophrenic.

Opposition to the war has grown. Senators and other legislators, former top Government officials, clergymen of every denomination, professionals, teachers and students, persons in every walk of life including corporation executives, Wall Street lawyers and high military officers, denounce it as criminal, ghastly, folly, immoral, disastrous and tragic. The State of Massachusetts has formally condemned it as unconstitutional, and other States have taken similar initiatives. Anti-war books appear in ever larger numbers. Thirteen US Representatives sued the US Government before a court of law, to stop the war. Its evil economic and psychological effects are increasingly encroaching upon the society.

And yet, the war has become institutionalized. Not even five events — each of which was sensational in itself, and which furthermore accumulated in rapid

¹ Confidential memorandum of May 6, 1967, by Assistant Secretary of Defense John T. McNaughton to Secretary of Defense Robert S. McNamara, quoted in *The Pentagon Papers*, N.Y., 1971, p. 534/5.

succession — made any noticeable impact : The Administration was able to weather the storm of indignation over the invasion of Cambodia, and over the MyLai atrocities, and over the invasion of Laos. Nor did the revelations of the Pentagon Papers or the US-supported farce of the « un-opposed » re-election of ally-dictator Thieu change the official policy.

Among the complex reasons for this unparalleled situation, the foremost is the « Vietnamization » program. This program, Americans are told, is working. It took only about three years (!) to reduce the US ground forces in Vietnam from over half a million in *all* of South Vietnam in January 1969 to 184,000 in the *war zone* by November 1971; by February 1972, the number had gone down to 139,000. If all goes well, by the end of the fourth year of the program — at the time of the next Presidential elections in the USA (November 1972) — a « residual force » of « only » 40,000 to 50,000 ground forces will be left in the war zone. At the same time, during the almost three years of this « winding down » of the war, the US dropped an even more gigantic number of bombs on Indochina than it did during the preceding three years. In November 1971, the monthly average was reported at 70,000 tons² !

The Vietnamization policy hopes to combine elements that seem to contradict and exclude each other : to withdraw most US ground troops from Indochina — and yet to guarantee the continuation of the US war there; to rely on Saigon forces to carry on the war — but with full knowledge that those forces will be as unwilling as before, to die for a US client regime. Nevertheless, the « Vietnamized » phase of the war is expected to last for years, and to end in victory. It is designed to achieve the aim pursued by the USA ever since 1954, namely, to keep at least the strategically most important areas of South Vietnam under permanent US military, political and economic control.

This is to be achieved by the following strategy : (a) pro-Saigon Vietnamese are to fight anti-Saigon Vietnamese with US weapons and air support in a new type of technological war which, it is hoped, will give Saigon an enormous military superiority; (b) however, if this policy will not succeed, relatively small American forces will wage the technological war in an essentially *unilateral* way — that is, in a war in which the anti-Saigon Vietnamese will optimally not be able to fight back. The role of the Saigon regime would be reduced to suppressing the domestic opposition, with US help, through terroristic methods. Saigon's US-trained police have recently been increased from 80,000 to 122,000 men.

There are many indications that the US war has been deliberately prolonged, and the withdrawal of US ground forces deliberately delayed and spread over a very long period, in order to gain time for developing, for experimenting

² McNAUGHTON, J.M., in *The New York Times*, Nov. 14, 1971, Sec. 4, p. 1. (Throughout this article, italics within quotations are added.)

with, and for « improving » the technology for the « Vietnamized » phase of the US war.

The proposition that « Asians should fight Asians » in pursuit of American policy is not new. The US phase in Vietnam started in 1954 with systematic build-up (clandestine because it violated the Geneva Accords) of Diem's notorious police forces. Colonial and hegemonial powers have often used indigenous troops, as well as indigenous puppet regimes, in areas dominated by them.

The Vietnamization policy, however, constitutes refinements of this old strategy. It combines it with the newest warfare technology, the most complex and devastating ever seen. It differs therefore qualitatively from previous wars, and even from the early phases of the US war in Indochina. It introduces previously unknown *dimensions of danger* for the future. We would be mistaken in considering « Vietnamization » merely as a reprehensible plan for a corner of South East Asia, limited to a specific situation. The plans for the systematic continuation and further perfection of the new strategy, as will be shown below, are already being pursued. They further corrode and destroy the very fundamentals of the international order.

The « Vietnamization » policy is conceived as first application, and preparation for possible future application, of the « Nixon doctrine ». The mass-circulation magazine, *Readers Digest*, which has consistently supported the war, was from its own standpoint correct when it praised the « Vietnamization » policy because if successful it will « *prepare the ground* there for the Nixon Doctrine »³.

THE NIXON DOCTRINE AND THE « VIETNAMIZATION » PROGRAM

In October 1967, long before becoming President, Mr. Nixon published in a very prestigious journal a programmatic article. Significantly entitled « Asia after Vietnam », it outlined his philosophy about the future role of the USA in the world, with particular emphasis on Asia⁴. The USA had too much and for too long concentrated on Vietnam. To believe that Asia as a whole is « only peripherally an American concern » would mean to look down on Asia (« racial and cultural chauvinism ») and « a misunderstanding of the

³ MURPHY, C.J.B., « For the Defense - Melvin R. Laird », in *The Readers Digest*, Aug. 1971, p. 52.

⁴ All quotations in this section are from Mr. Nixon's article, « Asia After Vietnam », published in the quarterly, *Foreign Affairs*, Oct. 1971, p. 111 ff.

westward thrust of American interests... The US is a pacific power... both our interests and our ideals propel us westward across the Pacific... »

The dangers in Asia are said to be Chinese aggressiveness, and indirect aggression through insurrections. But Mr. Nixon was aware that, after the Vietnam experience, the USA would be deeply reluctant « to become involved again in a similar intervention *on a similar basis* » (that is, with a huge expeditionary force). The SEATO Treaty arrangement, comprising as it does European countries (which have refused to side with the USA in its Indochina war) he considers as « somewhat anachronistic ». Preemptive war against China by the USA with its Asian allies, is ventilated but rejected.

The expectation and emphasis of his 1967 program was still on military interventions — however, as much as possible by Asians against Asians, and only electively by the USA. But « the Asian nations have been unwilling to form a military grouping designed to forestall the Chinese threat ».

And yet — this was the cornerstone of Mr. Nixon's 1967 program — « it should be possible to persuade » the nine members of the non-military « Asian and Pacific Council » (ASPAC) to transform ASPAC into a military alliance. It would comprise South Korea, Japan, Taiwan, Thailand, Malaysia, South Vietnam, the Philippines, Australia and New Zealand. « Even India might finally be persuaded to give its support ⁵. »

Mr. Nixon was very explicit in explaining why, in his opinion, the nine countries should combine in « the militarily oriented ASPAC » : They « have certain traits in common : a prime reliance on private enterprise...; receptivity to private capital investment, both domestic and foreign, including such incentives as tax advantages [for the investors];... these nations have, in short, discovered and applied the lessons of American economic success » (p. 119). They are in « common danger from communist China », and should « quickly establish an indigeneous Asian framework for their own future security » (pp. 113, 114).

It is noted that the plan did not provide for US membership in the new alliance. « Other nations must recognize that the role of the United States as world policeman is likely to be limited in the future » (p. 114). In fact, however, the doctrine merely makes bigger demands for the world policeman. It raises the price for US military intervention in other countries. First of all, other countries must make new arrangements for « old-style wars » and for « the so-called “ wars of liberation ” ».

⁵ Side by side with these military preparations, the United States' « long-range aim » should be « to pull China back into the family of nations », but « for the short run » pursue toward her « a policy of firm restraint » while persuading Peking to accept, in its own interest, « the basic rules of international civility ». Comparing China with « the more explosive [Negro] ghetto element » in the USA, he calls both China and the radical Blacks « an outlaw element [that] has to be brought within the law » (p. 123).

In any case of actual or « threatened » internal insurrection (always axiomatically considered to be foreign-inspired), the countries of *the region* must try to suppress it collectively. If the « lesser powers in the immediate region » can themselves overcome « threatened aggression of whichever type » — in other words, if Government A, with military help from other Governments also dedicated to the American free enterprise system, can suppress an upheaval — then the US need not intervene (« the US is spared involvement ») and « the world is spared great power action » (which, Mr. Nixon pointedly observes, always created the danger of nuclear conflagration).

Although this 1967 plan speaks of « lesser powers », it expressly demands the military build-up of Japan proportional to Japan's great economic strength, and therefore also demands « a modification of the Japanese constitution » which excludes the maintenance by Japan of military forces and war potential. Opposition inside and outside Japan must be overcome, in view of « the role Japan *must* play in helping secure the common safety of non-communist Asia ».

The full meaning of the Nixon plan can best be grasped by considering a concrete illustration. If such Asian Holy Alliance had existed at the beginning of the anti-Diem movement in South Vietnam, military forces of eight « allies » including, *i.e.*, Japan and Taiwan, would have been obliged to invade and make war in South Vietnam; the plan assumed that this would have overwhelmed the NLF, so that the US would have achieved its war aim — maintenance of a US client regime in Saigon — *without* having to intervene directly.

Mr. Nixon's 1967 plan was, however, realistic enough to contemplate the possibility that the collective intervention by « lesser powers » might be unsuccessful. In such case, they would have to make a « collective request to the US for assistance ». The USA could accept or reject such request. In any event, the request would have to « be presented to the US in clear-cut terms, by nations which would *automatically* become allies whatever response might prove necessary » in the opinion of the USA. In plainer language : only if other countries would *a priori* pledge to furnish manpower for war outside their own borders (« automatically become allies ») would the USA consider the request.

The 1967 Nixon doctrine provides, however, for still other contingencies. It demands guarantees that future wars in which the USA will be interested will as much as possible be fought by *non-American* manpower. But it specifically reserves for the USA the possibility to intervene regardless of such conditions. It announces the right for the US to « respond militarily to communist threats » — an extremely elastic formulation — at anytime, at its own discretion, and independent of any request from the government involved, or from others. Such usurpation of the right of unilateral US intervention is specifically claimed, not only for Asia but generally. « in the less stable parts of the world » (p. 114).

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During the four years since the publication of this program, the formation of an Asian-Pacific anti-communist military alliance has apparently made little progress. But its essential aims — to continue American hegemonial interests through potential use of non-American manpower, and to include foreign countries to « share the burden » of US global military policy — have not been forgotten. For example, in Summer 1971, the US Secretary of Defense, on a visit to Tokyo, as reported in the press, urged Japan to acquire nuclear capability in contradiction of the Nuclear Anti-Proliferation Treaty and obligations accepted by the USA under United Nations General Assembly and Security Council Resolutions.

The right to assist foreign countries by invading them, even if the respective government did not request or authorize such assistance, was asserted in the invasions of Cambodia and Laos — operations which President Nixon in his report to the Congress of February 25, 1971 claimed as concrete application of the Nixon doctrine⁶.

The Nixon doctrine has undergone changes. It is not a statute or treaty, but signifies long range policy. It has been variously re-formulated. For example, in his report to the US Congress of February 18, 1970, Mr. Nixon distinguished between two types of situations :

Firstly, « We shall provide a shield [the term is often used as including possible nuclear actions] if a nuclear power threatens the freedom [an extremely vague formulation] of a nation allied with us, or of a nation [not allied with us but] whose survival we consider vital to our security and the security of the region as a whole. »

In such cases, then, no request for or authorization of US military intervention would be required.

Secondly, « In cases involving other types of aggression, we shall furnish military and economic assistance when requested and as appropriate, but we shall look to the nation directly threatened to assume the primary responsibility of providing the *manpower* for its defense. »

Commenting on this statement, an Australian expert said :

« Since the time of the Truman doctrine [1947] the US has been... dedicated to the containment of communism on a global scale. These goals are now rejected by large sections of the American public and Congressional opinion... the Nixon doctrine, however, seeks to *preserve the essentials of the older policy* while taking account of the new public mood⁷. »

That the doctrine is global was underscored by Mr. Nixon in 1967 :

If another friendly country should be faced with an externally supported communist insurrection — whether in *Asia*, or in *Africa*, or even in *Latin*

⁶ See HEDLEY BULL, « New Balance of Power in Asia and the Pacific », 49 *Foreign Affairs*, July 4, 1971, p. 672.

⁷ *Ibid.*

America... the American public or the American Congress [might not] support a *unilateral* American intervention, even [!] at the request of the host government. »

Its essence is « the threat or use of force in international relations » — whereas the most fundamental of the Principles of the UN Charter forbids this.

It need not be repeated here that the US military intervention in Vietnam, and the rest of Indochina, from the beginning has been in blatant violation of basic tenets of the world legal order; and that, therefore, the continuation of that American war in the guise of « Vietnamization » merely compounds that wrong.

Attention will here be focused on the new technology by which the misnamed « Vietnamized » war is to be won. This new technology has gradually been « perfected » during the last few years. The torment of the Indochinese peoples had to be *prolonged* in order to test that technology on them, and « improve » it by large numbers of scientists and a gigantic war industry⁸.

The problem has been to transform the war gradually into a strategy requiring few — or no — US ground forces. For this purpose, the USA had, at first, over many years trained, equipped and paid an enormous Saigon army numbering, with auxiliaries, over 1 million men. But these forces have shown little fighting spirit. Hence, reliance had to be put on terroristic use of airpower. Airpower, however, required two things : methods to *find* the enemy; and after finding him, use of the most « effective » ways of destroying him. In other words, a strategy had to be found which, despite all talk about the Saigon regime's capacity to « take over », would make use of Saigon forces in so far as possible but, if need be, promise success also if the Americans would in essence have to carry on the « Vietnamized » war alone. This strategy, it appears, is believed to have been found : it is the « electronic battlefield ».

THE ELECTRONIC BATTLEFIELD

The name is characteristically misleading. It hides the large-scale violation of the basic rules of warfare which the strategy *necessarily* implies. It is *not* a « battlefield ». The essence of the strategy is that there will be no battle — no fighting between opposing forces. The strategy is, and should be called « unilateral electronic devastation and massacre ».

⁸ A group of concerned medical doctors in New York City (N.Y. Chapter of the Medical Committee for Human Rights) has shown that corporations manufacturing bread, cakes, household refrigerators, photographic equipment, watches, washing machines, medicines, aluminum wrapping paper, and the like, have also been mass-producing and « improving » horror weapons for Indochina.

It is based on extremely sophisticated and complex devices to « detect » the areas to be devastated; whereupon, again by computer and other highly complex systems, to guide ever more indiscriminate weapons — or to guide bombers, helicopters, etc. carrying such weapons — to areas « revealed » by the « detectors ».

The detectors most widely used are small seismic or acoustic sensors with which a suspected area is densely strewn (« seeded »), usually camouflaged by artificial animal excrement. After thus being distributed in vast quantities, and « activated » by remote control, they relay signals as instructed. The computer that receives the signals can be located anywhere — at some military base, perhaps located in a different country (*e.g.*, at Nakhon Phanom in Thailand) or on an airborne military bomber, or on one of the US Navy carriers cruising in the Bay of Tonkin. In any case, the computer will then dispatch the strike force against the area « indicated » by the sensors message, and strike planes are themselves increasingly equipped with computers that automatically lead them to the indicated area and automatically drop the bombs.

The implications of the « electronic battlefield » strategy are so serious as to be perhaps comparable to those of the appearance of nuclear weapons in world affairs.

Much light was thrown on this strategy when, in November 1970, the Electronic Battlefield Subcommittee of the US Senate⁹ conducted a 3-day Hearing at which 12 high officers of the US Army, Air Force, Navy and Marine Corps described the techniques of the Electronic Battlefield, their experiences and expectations. They presented numerous charts, statistical tables and photographs. Much emphasis was laid on the costs of the expansion of the strategy. The Hearings were conducted in public and in the presence of journalists, except for issues that for reasons of military security were discussed in closed sessions. After deleting certain sensitive matters, the record of the Hearings was published as official US Government publication¹⁰.

The emphasis was not on whether but on *how* the Electronic Battlefield concept could best be further developed, on the basis of the experiences in Indochina.

We are, of course, not questioning the desirability of decreasing American

⁹ The Subcommittee, consisting of 3 US Senators (Howard W. Cannon, Daniel K. Inouye, and Barry Goldwater), was appointed by its parent body, the Senate Committee specializing on military preparedness. The latter, in turn, forms one of the sub-committees of the « Committee on Armed Services » of the US Senate.

¹⁰ *Investigation into Electronic Battlefield Program. Hearings before the Electronic Battlefield Subcommittee of the Preparedness Investigating Subcommittee, US Senate, 91st Congress, 2nd Sess., Nov. 18, 19, 24, 1970, Washington D.C., US Government Printing Office, 1971, 221 p.*

casualties in legitimate warfare. We are concerned about the illegitimate methods by which this is to be accomplished, and which have been experimented with in an illegitimate war. The philosophy revealed in the testimonies showed a determination to develop techniques which, regardless of consequences for the other side, would enable the USA to conduct hostilities optimally one-sided. One side is to be virtually immune, and the other side carries the risks. The philosophy was expressed by one of the testifying generals, after referring to the drastic reduction of American casualties (from 12 to 3 per hundred enemy casualties even by late 1969) through the use of sensors :

« ... these sensors have helped us to make the first step toward the automated battlefield. This is a worthwhile approach toward... getting the job done with minimum danger to our friendly personnel. » (p. 39.)

One Senator stated to the general :

« The sensors were sent to Southeast Asia *before an adequate testing program had been accomplished.* » (p. 70.)

The general thereupon described the evolution. At first, « little gadgets » were brought to Vietnam, occasionally by the inventor himself; « some did not work at all ». They were « a long way from perfect ». But « we were learning how to *use* them out there (in Vietnam) » almost simultaneously « as we learned to *make* them back here (in the USA) ». The testimony indicated the destructiveness of the experimentation. For example, it states that certain sensor fields did not give « the results we had hoped for, although artillery had been responding nightly to activations » (artillery barrages were fired every night in response to sensor signals !). Only gradually would, for example, « 3 or 4 enemy bodies (!) in graves adjacent to sensor fields » be found, as « evidence that our efforts were *beginning* to get some results. But we were still not completely convinced that our sensings were adequate to justify the great expenditures of ammunition ». Hence, strict verification was ordered; and « success » was recognized « only if our teams could produce a man ». Whether the corpse had to be identified as a *soldier* was not revealed (p. 49). The experimental character of the sensor-activated bombardments is also shown in the witness' statement that « heavy rains caused (sensors to give) false alarms » and that, furthermore, untrained operators misunderstood sensor signals; but that « in time » the operators became « experienced » and « can tell you the difference between rain and footsteps of a man » (p. 69). US veterans from Vietnam deny this possibility; and how can the sensor distinguish between footsteps of human and animal, of man, woman or child, of combatant or civilian ?

Another general was asked : « How do we prevent sensors from killing innocent people versus enemy troops ? ». He answered that the « only way » to make this distinction would be from the contents of the *conversation* relayed by *acoustic* sensors (implying that all US operators are conversant with

Vietnamese dialects; that all conversations of soldiers differ from civilian conversations; and omitting that all sensors that relay not acoustic but *seismic* data cannot « hear » and hence cannot report any conversation or any sound). He added that commanders must use their general knowledge of where friendly forces or « friendly » civilians are, and « if they had doubts they would not fire » (p. 33). The same witness recounted the following gruesome episode : An acoustic sensor, hanging in a tree, was discovered by some « people ». The sensor knew that, because it relayed to a phonograph tape their excited voices or, as the witness expressed it, « their jabbering ». Then you hear them (on the tape) chopping the tree down... The final part of that tape is a sort of a scream by these people like the tree hit them ». Senator Goldwater added, « I heard that tape » (p. 34). The sensor could of course not indicate whether these were civilian or military victims.

A third general stated that in « *very* densely populated areas where there are noncombatants » (what about *not very* densely populated areas ?) a « *very precise* » type of sensor « *would* » be required; and that a seismic device used in Vietnam « *can't distinguish between friends and foe* ». Therefore, he declared, « we added *maybe* (!) a magnetic device » that would indicate « the presence of enemy weapons or ammunition. So I believe in the populated areas *we will have* to make a very careful choice ». He admitted that the technology for « careful choice » has not been found and, in fact, implied the need for further experimentation : « A combination of sensors and techniques *will* give us the answer » (p.205). There was no explanation of how a magnetic device would ever distinguish between « enemy weapons » and, say, a civilian's bicycle. No further questions were asked by the Committee. But Mr. William Proxmire, one of the US Senators deeply opposed to such criminal conduct, gave the answer :

« The sensors cannot tell the difference between soldiers, women, and children... Whole villages may be wiped out by seeding wide areas with air-dropped explosive devices designed to kill anyone... »

Or, as a US Special Forces member put it, the sensors only report that

« ... something is out there. It could be wind... We really have no idea what we are shooting at¹¹. »

The prostitution of science fostered by the US war in Indochina has led to the development of various other complex « detection » devices for the computerized guidance of bombardments — for example, the notorious « people-sniffers » such as the XM-3 chemical detector. As the name implies, these devices « smell » (and report to the computers) emanations of the body such as sweat. Even if they could distinguish between human and animal scent, how could they

¹¹ Quoted by Orville SHELL, « Electronic Weapons Replace US Troops as Killing Continues », in *American Report of Religion and American Power*, Sept. 24, 1971.

distinguish between the scent of an enemy soldier and a civilian? The US Senate Subcommittee was told by one of the military witnesses that at the time of the Hearings (November 1970), people-sniffers were used by « each » US Division in Vietnam (p. 184).

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At a conference of Vietnam veterans, Mr. Herter, a grandson of President Eisenhower's Secretary of State, called the new system, on the basis of his own experiences as US Signal Corpsman in Vietnam,

« ... a greater atrocity than a hundred MyLais — the systematic destruction of thousands of innocent persons, of entire cultures by an automated electronic and mechanical death machine, whose killing would be onesided, unseen and universal... The people become dots of light on infrared film. They are never seen, never known, never even hated. The machine functions, [the area is bombed, and] the radar blip disappears¹². »

He confirmed, as did the generals who testified before the Senate Committee, that the new system replaced the anti-guerilla infantry patrols that had been unpopular with the US forces. But his conscience revolted against the price.

The principal purpose, then, of the « Vietnamization » policy (namely, to reduce the need for American ground forces) has largely been achieved, regardless of whether its other aspects (larger military responsibilities by Saigon forces) materializes or not. But this requires the systematic commission of war crimes; they are an intrinsic ingredient of the « Vietnamization » policy.

Indochina is used, and has been used for several years, as a laboratory for experiments on human beings. The non-combatant victims are treated in a manner reminiscent of the « medical experiments » that were conducted by Hitler Germany to increase the efficiency of the Whermacht.

The *cumulative* effect of the US warfare in Vietnam must also be considered. Even while the experimentation has gone on, the illicit methods of the war's pre-electronic phase have continued to be applied. Long ago they were declared to « violate the conscience of civilized man, trample on recognized standards of international law, and raise the spectre of genocide against the Vietnamese people »¹³. Since then, many of those « old » illicit weapons and techniques have been « improved » and new ones have been added — for example, the « Phoenix » program for the elimination of the opponent's « infrastructure » (the official dehumanized designation of important NLF and PRGSVN

¹² Quoted in M. RATNER's report on the Investigation conference of « Vietnam Veterans against the War », Detroit, Feb. 1971, *American Report. Review of Religion and American Power*, Nov. 5, 1971, p. 3.

¹³ This is the formulation of the Stockholm Conference on Vietnam, 6-9 July, 1967, *Report of the Commission on the Face of the War*, p. 1.

persons) — a program reminiscent of the systematic killing by the nazis of Soviet functionaries (Commissar Order) and of intellectuals and Communists (*Einsatzgruppen*) that was so strongly condemned by the Nuremberg International and US Tribunals; or the giant ploughs that transform forests into wasteland and breeding grounds for malaria mosquitos. The destruction of the land by various methods has reached such proportions that new words had to be created to describe it — « ecological war » leading to « ecocide ».

Ominously, but quite logically, the numerous official statements about plans for the further « Vietnamization », the « winding down » of the war, and the « lower military profile » of the US, never refer to an abandonment or at least relenting of those methods. Indeed, as long as the US will continue its war under these guises — and the predictions speak of years ! — the logic of the « Vietnamization » will permit or perhaps compel the development and application of still other means of destruction, in disregard of the laws of war. As a side effect, the world's only country engaged in such practices would thereby further increase its military superiority, for potential utilization elsewhere.

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It is by now known, and was confirmed in the 1970 Senate Hearings, that the USA has provided the Saigon forces with sensors, and trained them in electronic battlefield techniques, as an aspect of the « Vietnamization » program¹⁴. Since the *users* of the sensors need not be concerned about the « really complicated » aspects of « this type of equipment... you can give it to a relatively unsophisticated force and still get a lot of good out of it » (p. 68). And « the Vietnamese Commanders were enthusiastic about the sensors they were receiving » (p. 34).

This enthusiasm of Saigon's generals could conceivably raise the following question : Must the Americans be more solicitous of the people of South Vietnam than the Saigon regime itself ? If Thieu and his generals wish to stay in power by more slaughter and more destruction in their own land, need such foreign fratricide concern American authorities who merely provide the instrumentalities ?

The answer is emphatically, yes. Under elementary principles of law and fairness, the outside power that maintains a client regime through military intervention and gives the client regime the mains for large-scale crimes, is co-responsible for the crimes. This applies not only to the sensor strategy but to

¹⁴ The sensors play a double role in this respect : firstly, « Our people who are working with the Vietnamese in Vietnamization are tending to *include this sort of equipment in the Vietnamization* » (p. 34); on the other hand, sensors will « be effective in protecting *our* [US] logistic and supply installations that will remain after we have substantially completed our Vietnamization program » (p. 68).

all weapons and devices forbidden by the laws and customs of war, which the USA has supplied or will in future supply to the Saigon authorities or to other mercenary forces for use in the « Vietnamized » war.

It will be remembered that at Nuremberg the accused nazi leaders argued strongly that, *e.g.*, the Pétain-Laval regime agreed to, actually cooperated with, and thus *legalized*, certain German policies such as mass deportations for forced labor. All war crimes tribunals faced with this perversion of the principle *volenti non fit injuria* (one who agrees to an injustice cannot complain against it) answered with the universal elementary criminological axiom that consent among accomplices does not exculpate any of them.

The statement by a US Nuremberg Tribunal, rejecting the defense argument that in certain German-occupied territories where anti-semitism was endemic, local people participated in the extermination of Jews, deserves to be quoted again. The Judgment called instigation to pogroms by nazi police units

« ... a crime which, from a moral point of view, was perhaps even worse than their own directly committed murders... To invade a foreign country, seize innocent inhabitants, and shoot them is a crime, the mere statement of which is its own condemnation. But to stir up passion, hate, violence and destruction among the people themselves, aims at breaking the moral backbone...¹⁵ »

PLANS FOR THE EUROPEAN AND « WORLDWIDE » APPLICATION OF ELECTRONIC BATTLEFIELD STRATEGY

It must again be emphasized that the claim that the « Vietnamization » program constitutes a beginning of a « lowered military profile » of the US in world affairs is incorrect. The profile is only changing.

This was made clear, for example, in the 1970 Senate Hearings. They revealed plans for the use of sensors also in a « European-type environment », both in peace and in war. The Commanding General, US Army Combat Developments Command stated :

« I feel certain that a good number of the sensors that we have found so useful in Vietnam are going to be equally useful, *in some cases more useful*, on border surveillance in *Western Europe*. This is known as the waiting and watching period... »

The clandestine placing of such devices in foreign countries would, needless to say, constitute a most serious violation of the sovereignty and territorial integrity of those States.

Secondly, « assuming that war is started » in Europe, sensors « would be extremely useful in our rear areas where the enemy is able to do a lot of

¹⁵ Judgment in the *Einsatzgruppen Case* of 8-9 April 1948. *IV Trials of War Criminals...*, Washington, D.C., US Government Printing Office, p. 435.

damage... ». In other words, the sensor method would be used against areas where maquis or partisans might be suspected to be active. The witness added that « we are busy » developing the « specifics of tactics, techniques, and organization » for the use of sensors in Europe (p. 215).

In fact, plans are under way for « *worldwide* » application of the strategies made possible by the sensors. The Senate Committee was told that « our current family of sensors », while « designed specifically for use in Southeast Asia », has shown « significant potential for... *future tactical operations worldwide* ». For this purpose, « improvements must be made » because of « the much more severe environmental conditions in *many other areas of the world which are of military interest* », for example, in « temperate latitudes » and in « the overcrowded radio frequency environment in Central Europe... ». The Tactical Air Command was working on those problems to increase its « *worldwide operational capability* » (p. 117). Another general emphasized the advantage of night operations which are facilitated by the sensor technology, not only in Vietnam but « *in other potential battlefields of the world* » (p. 204). A third military witness spoke of « plans for the next 10 years » to obtain for the US Air Force an (undisclosed) number of an improved type of AC-130 gunships which carry sensors on board. This « would provide the US Air Force with a *worldwide self-contained night attack capability* ». The model has « exceptional capability » to monitor movement on the ground by day and night, and « can be *deployed worldwide* »; it will therefore « give the US Air Force a unique multi-sensor weapons system » (pp. 154-155).

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The systematic development of the automatization of annihilation, set in motion or intensified by the « Vietnamization » program, is ominous even beyond the Indochinese conflict.

Firstly, it enables a government to wage almost « unilateral wars », without the need for large manpower, and thus without alerting its own people or provoking their opposition. As the minds of thousands of scientists are put into the service of unlimited technological destructiveness, the bodies of hundreds of thousands of young men are no longer required. More than that, the ensuing « defense » contracts will give them jobs and high wages.

Secondly, since large expeditionary forces would no longer have to be transported to, and be visible in, distant lands, the new strategy facilitates and constitutes a constant temptation for clandestine military operations. The more mechanized these operations become, the more easily can they be carried out in secrecy, and by remote control from places far away from both the homeland and the action.

Thirdly, for the same reasons, the new strategy tends to decrease the control, by the democratic process and public opinion, of military preparations and the

conduct of foreign policy — although the need for such control is, of course, all the more crucial as the military potential becomes more destructive¹⁶.

Fourthly, it corrodes the respect for the rules of proper international behavior, as the monomaniacal intent to « improve » the new strategies disregards the limitations set by international law.

Fifthly, the increasing dehumanization caused by increasing computerization and mechanization decreases the actual control even by the military planners, and raises the risks of unplanned catastrophes.

Furthermore, the entire character of the new war strategy is bound to contaminate the international atmosphere and to intensify international tensions — which tensions, in turn, would increase the danger of the actual application of the new strategies.

Finally, while the world cries out for a reversal of the armaments race, the electronic battlefield technology is bound to lead to an armaments race of altogether new and frightening dimensions¹⁷.

THE DICTATES OF THE PUBLIC CONSCIENCE VERSUS PSEUDO-METAPHYSICS : IS THE ABUSE OF TECHNOLOGY FOR WAR INEVITABLE ?

The potential application of the fruits of the « Vietnamization » program — the combination of the electronic battlefield concept with monster-weapons — poses grave problems to the USA and to the world. The problems become even

¹⁶ The new technological strategies could also increase the temptation to mislead the US legislature about the use of public funds. Such deceptions would not be new. For example, US Senator Edward Kennedy has complained that the secret paramilitary operations of the Central Intelligence Agency (CIA) in Laos have been financed from US budget funds appropriated by the US Congress for such humanitarian purposes as help to refugees, public health projects, and for the Food for Peace program. Officially, the Food for Peace program « combats hunger and malnutrition » through donation or sale of US food « to friendly nations ». Yet, \$ 1.6 billion destined for this program were actually used for military purposes since 1954. When this finally became known in 1971, another US Senator (Mr. Proxmire) observed that the program should be called « food for war », (quoted by Louis FISHER, « Hiding Billions fro Congress », in *The Nation*, Nov. 15, 1971, p. 489.

¹⁷ A former head in the US Department of Defense, Herbert F. York, describes in his memoirs the tendency to accelerate the armaments race, and the absurdity of it. (« *Race to Oblivion. A Participant's View of the Arms Race* », New York, 1971) :

« Over the last 30 years we have repeatedly taken unilateral actions that have unnecessarily accelerated the race... In the large majority of cases, the initiative has been in our hands. Our unilateral decisions have set the rate and scale for most of the individual steps in the strategic arms race... »

The steady advance of arms technology may be leading us not to the ultimate weapon but rather to the ultimate absurdity : a completely automatic system for deciding whether or not doomsday has arrived. »

He concludes that « the arms race... is rapidly and inexorably diminishing our security ».

graver by the argument that is frequently used in justification of this ominous development — namely, that « whether one likes it or not » the application of scientific progress is *inevitable* in *all* fields and, hence, also in the *military* field.

The argument draws vast conclusions from an *evident* logical and moral fallacy; there is fundamental difference between *use* and *abuse*. Yet, the argument is so widely accepted, and has promoted the armaments race, with the concomitant corrosion of the accepted limits on warfare, that it requires closer consideration.

Shallow but widespread pseudo-metaphysical beliefs have done much harm. There is, above all, the myth that « war is inevitable ». Even the saying, « war breaks out » is instructive; the formulation implies that wars have some sort of subterranean existence, a hidden life of their own, and the « outbreak » is ordained by fate or cosmic necessity beyond human influence. The Judgment of the Nuremberg International Tribunal has with finality destroyed the myth. This is the Judgment's most basic message. In actual fact, the Judgment shows incontrovertibly that wars are not ordained by mysterious destiny, but are brought about by specific aggressive decisions of specific decision-makers who are personally responsible for such crime. Regarding the US war in Indochina, the « Pentagon Papers » have fully confirmed the correctness of that Nurnberg doctrine. Historical, philosophical, etc., analysis of the *genesis* of decisions leading to war, and of the impact of social forces, is of course proper and necessary; but this is altogether different from positing a depersonalized automatism. To concede such automatism to the war-makers actually helps them to hide their plans and decisions behind metaphysical pomposity; instead of exposing the makers of war as enemies of mankind, the anti-war forces, if handicapped by the « inevitability » myth, declare themselves as quixotic dreamers.

Equally false, and equally dangerous, is the pseudo-metaphysical assertion that, once there is a war, an inscrutable fate has ordained that every technologically possible method of waging it will « inevitably » be used. Has not war become « total »? Have the rules of war not become obsolete by technology¹⁸?

¹⁸ There is a similar confusion (widespread even among peacefully inclined people) : « since war, any war, is evil, it does not really matter whether legal or illegal methods are used in it. Are not *all* killings in war *equally* repugnant? » War is certainly evil. But the conclusion is untenable. Wide gradations of evil exist, and the gradations are crucial. It is demonstrably untrue that the distinction between permissible acts of violence (regrettable as they may be) and impermissible acts « makes no difference ». It makes a great difference to a prisoner of war, whether he is properly kept alive or illegally killed; or whether a woman's house is illegally destroyed or not; etc.

It must be conceded to those who « see no difference » that the law of war is itself too permissive: it allows *too much* evil. The reason is that the law of war is to a large extent created by military men. This, however, proves even more cogently that they must not, under military honor, go beyond the limits established by their own profession and their own governments!

The assertion of the « inevitability » of technological atrocities plays into the hands of the decision-makers who order them — just as the assertion « there will always be wars » obscures the responsibility of the pro-war forces.

The very term « total war » is void of specific meaning. If the term is to convey, for example, that a people attacked by an aggressor devotes itself totally to their country's defense, it is a noble concept, and impeccable under any international rule. If it means the usurpation of the « right » to disregard the norms of law and morality in order to gain advantages which those norms deny, it denotes criminality.

This point, too, was fully clarified at Nuremberg. The Judgment of the International Military Tribunal was adamant in condemning « *the nazi concept of total war* ». It insisted that this concept was the very reason that Germany committed War Crimes « *on a vast scale, never before seen in the history of war* » :

« There can be no doubt that the majority of [Germany's war crimes] arose from the nazi conception of "total war", with the aggressive wars were waged. For, in this conception of "total war", the moral ideas underlying the conventions which seek to make war more humane are no longer regarded as having force or validity. Everything is made subordinate to the overmastering dictates of war. Rules, regulations, assurances and treaties all alike are of no moment; and so, freed from the restraining influence of international law, the aggressive war is conducted by the nazi leaders in the most barbaric way. Accordingly, War Crimes were committed when and whenever the Fuhrer and his close associates thought them to be advantageous. They were for the most part the result of cold and criminal calculation¹⁹ (by those top decision-makers rather than of individual outrages) ».

Even persons who are appalled by illegal methods of warfare sometimes unintentionally spread a belief in the « inevitability » of those atrocities. Here is a typical illustration : Two American authorities on zoology went to South Vietnam, under the auspices of the Society for Social Responsibility in Science, to study the ecological effects of the war, especially the consequences of the defoliation policy. Their detailed report concluded that the US chemical war is « extremely destructive, both in human lives and environment ». Yet, they added :

« With general agreement among military experts that defoliation is a potent weapon in guerilla warfare, it is to be expected that *in any future war* of this nature *more extensive use* will be made of it... Making a realistic appraisal of defoliation... we must, therefore, ... also anticipate greatly expanded defoliation actions in the future²⁰. »

¹⁹ IMT Judgment, p. 227.

²⁰ Dr. Gordon H. ORIAN and Dr. E.W. PFEIFFER, « Ecological Effects of the War in Vietnam », (Report about their investigations in Vietnam in March 1969), in *Science* (Journal of the American Association for the Advancement of Science), vol. 168, May 1, 1970, p. 553.

The two scientists evidently wished to express a warning. But their allegedly « realistic » assumption that, as they said, « a technologically advanced society » *will* wage even worse chemical war in the future against poor peasants, can at best be interpreted as resigned *acceptance* of what they fear. We must not assume a « general agreement among the military » about the desirability of blatantly illegal and dishonorable methods; or, if there existed statistical evidence of such consensus, that their intentions are unchangeable. We are again reminded of the Judgment of the Nuremberg International Tribunals, which stated that those German military officers who willingly carried out Hitler's criminal policies « were a disgrace to the honorable profession of arms ».

The « inevitability » argument is, first of all, demonstrably wrong by the *empirical evidence* of human history. If the argument were correct, it would have to hold for *all* stages of technology. The unarmed enemy, the weeping woman or the small child can be slain by a club as well as by electronically guided superbomb; and wooden huts burned down by primitive torches as well as by flame-throwers. It has long been known that water can be poisoned by throwing a dead rat into the well. Large-scale atrocities have been committed; but had man's technological potentialities (starting with his fist!) always been fully used as the « inevitability » superstition claims, the human race would have been exterminated long before the electronic battlefield era. To mention a single example referring to a scientific discovery : at least for a century, since the progress of bacteriology, bacteriae could have been deliberately spread into enemy territories.

It is true that during long periods of history, extremely cruel measures were considered permissible in war. The point is that *limits* to the permissible cruelties still *were* set. For example, the Old Testament (Deuteronomy 20 : 19, 20) forbids the destruction of fruit-bearing trees in enemy territory, and the Code of Manu (India) ordered, long before the Trojan wars, that no enemy must be harmed if asleep or folding his hands to ask for mercy²¹; and the point is that the rules were considered sacrosanct; and that their violations — for example, to harm a herald of truce — were considered despicable treachery, and not only a crime but a sacrilege.

All this also destroys a more refined formulation of the « inevitability » argument; namely, that whereas *mores* and solemn pacts, rules and taboos may, on the whole, have been obeyed during stages of *stable* technology, they will « inevitably » be done away with by a *new* weapons technology.

In fact, in certain instances, the law of war did eventually legalize what technology could do. But as technology has developed ever more destructive

²¹ For a brief description of the historical evolution of the law of warfare, see e.g., FRIED, J.H.E., « War Crimes », in *Encyclopedia Americana*.

potentialities, States have out of sheer self-interest made conscious efforts to *prevent* such legalization.

Yet — and this is crucial — it would be absurd to claim that the law of war (or any law, on any subject) gives permission to cause *any* damage or injury or death because this is physically possible. No law allows that, irrespective of whether the theoretical physical possibility is created by modern or by age-old technology. Much of the vast body of domestic and international law consists of limitations and prohibitions of physical possibilities : The landlord must not injure the tenant who owes him rent, and a policeman must not kill the speeding driver, either with a modern weapon or an old pocket-knife.

The same is true of the law of war. The most fundamental principle of the universally accepted and most important treaty on it (the Hague Regulations IV of 1907) unequivocally rejects the notion that every technological possibility — past, present or future — may be used :

« The right of belligerents to adopt means of injuring the enemy is *not unlimited*. » (Art. 22.)

The US Field Manual 27-10 (sec. 33) incorporates this overall rule, and emphasizes :

« The means [which may be] employed are *definitely restricted* by international declarations and conventions and by the laws and usages of war. »

The Hague Regulations, and the US Field Manual, then give *concrete examples* of the weapons and measures which are « *especially forbidden* », although they could, from a physical or technological standpoint, easily be applied. (All of these basic rules are incorporated in the US Field Manual 27-10) :

« 23(b) It is especially forbidden... to kill or wound treacherously individuals belonging to the hostile nation or army²².

23(c) It is especially forbidden... to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered...

23(d) It is especially forbidden... to declare that no quarter will be given. »

And the universal rule, so crucial in view of the existence of technologically complex horror weapons :

« 23(e) It is especially forbidden... to employ arms, projectiles, or material calculated to cause unnecessary suffering. »

The US Field Manual comments :

« *What* weapons cause “unnecessary injury” [and what weapons must therefore *not* be used, although physically available] can only be determined in light of the practice of States... »

²² FM 27-10 comments : « This article is construed as prohibiting assassination, proscription, or outlawry of an enemy... » (sec. 31).

This is correct. The « practice of States » does, indeed, establish or indicate a tacit *consensus* of the international community, even to the extent of changing or making obsolete a previous practice. Obviously, in the present era of revulsion against war, and of emphasis on human rights, a consensus or acquiescence by the international community to increase the types and destructiveness of permissible weapons can only be deemed to exist by *strictest* interpretation. Most of the horror weapons used by the USA in the Indochina war have never been used by any other country. For this reason alone, their use *cannot* be « the practice of States » — and *cannot* be justified by general consensus of the international community.

Also, if one State is the *first* to use a new horror weapon (as the USA did with napalm²³ in the Korean war) and a few isolated other States then use that weapon too (as Portugal did against Africans in her colonies), this increases the responsibility of the country that set the bad example, but can evidently not make its use an « accepted » practice of States.

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To these basic prohibitions in the Hague Regulations, many more, laid down for example in the Geneva Conventions of 1949 and other treaties, could be cited.

Taken together, as they must be, they show that the world order does *not* consider it « natural » or « inevitable » for the stronger side to use the full potential of its military superiority against the weaker side. Its superiority may be used, but only within the limits established by the law of war. *Systematic* defiance of that limitation by a *Government* is universally considered much more serious than the excesses of individual soldiers. For example, an authority on the subject²⁴, as far back as 1913 when war technology was relatively modest, invoked against such a government « the moral sentiment » of « outraged humanity » that would « avenge itself in unexpected ways » :

« Practically the whole civilized world has assented to [the Hague law of 1907]; and a state that openly, avowedly, and of set purpose violates its provisions will *dishonor* its own *signature* and write itself down as an *unscrupulous pledge-breaker*. It will not find such a reputation helpful... We are not speaking

²³ Even by the (extremely permissive) standards of the US Field Manual, the US napalm and crop destruction strategy in Indochina is prohibited. It considers « napalm and other incendiary agents » legally permissible under two conditions « against targets requiring their use », and even then only if they do not « cause unnecessary suffering to individuals » (sec. 36). It also puts two restrictions on the destruction of crops « through chemical or bacterial agents » : (a) that those chemical or bacterial agents be « harmless to man », and (b) that the crops be « intended solely for consumption by the armed forces », adding ambiguously : « if that fact can be determined » (sec. 37).

²⁴ LAWRENCE, T.J., *The Principles of International Law*, 5th ed., Boston, 1913, p. 393/4.

here of the possible excesses of troops... *without* any command from responsible authorities. These things are incidents of all wars... What we have in mind is the case of a *conscious* and *deliberate violation* of the laws of war *as a matter of state policy*... the nation that could thus act must possess at once *extreme unscrupulousness* and enormous strength. It is just possible that now and again such a combination would occur. *A ruler drunk with the consciousness of overwhelming power* might venture to *defy the moral sentiment of mankind*, but only to discover by and by that *outraged humanity* avenges itself in unexpected ways. »

Nor, the famous author added, could such a ruler

« ... ride off on the plea of military necessity; for, military necessity... has been taken into account in framing the Regulations...²⁵. Those who *imagine that a state is free to ignore because of the exigencies of the moment any rule to which it has subscribed its signature* are as erroneous in their reasoning as they are *anarchical in their sentiments*. *The laws of war are made to be obeyed, not to be set aside at pleasure.* »

The Hague peace conference, meeting in 1899 after more than 30 years of preparation, adopted, *i.e.*, the first version of the Hague Regulations IV. Yet even that conference — the most ambitious ever held to clarify, in principle, *all* aspects of war — had to realize that it was not able to foresee all possibilities of the future. It inserted, therefore, in the preamble to the Regulations a general guideline for the future :

« ... in cases *not* included in the Regulations... *the inhabitants and the belligerents remain under the protection and the rule of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience*²⁶. »

This provision (known, after its drafter, as the Martens Clause) is of fundamental importance. It elevates the standards of (a) the usages established among civilized peoples, (b) the laws of humanity, and (c) the dictates of the public conscience, to the *dignity of positive law*. It prevents any State from claiming that the silence or vagueness of the written law of war justifies the violation of the standards of humanity and conscience; and specifically puts both

²⁵ Quoting in support another authority, Prof. John WESTLAKE, *International Law*, Part I, *War*, 2nd ed., Cambridge, 1913, p. 57.

The rule that the law of war may not be violated by claiming that the violation was committed because of « military necessity » is uncontroversial. It is, for example, specifically stated in the *US Field Manual FM 27-10, The Law of Land Warfare* (US Department of the Army), 1956, p. 4 :

« The prohibitory effect of the law of war is not minimized by "military necessity". »

This is particularly interesting in view of the assertions of the US Government that certain of its actions in Indochina (which are forbidden by the law of war) have been necessary in order « to protect US troops », or because of the special character of that conflict, or in order to make possible the withdrawal of US troops under the « Vietnamization » policy, etc.

²⁶ Incorporated into US Dept. of the *Army Field Manual FM 27-10* of 1956, para. 6.

the civilians and the combatants under the *protection* of those standards of international morality.

In 1907, the Hague conference met again and carefully reconsidered and, where it found this necessary, refined the provisions it had adopted in 1899. But it found nothing to change or improve in the Martens Clause. At the concluding plenary session, the rapporteur Louis Renault stated :

« Ainsi que vous le voyez, nous avons conservé le préambule de 1899 parce que nous avons considéré qu'il faisait *partie intégrante de la Convention*²⁷. »

If proof is needed that the international community has *continued* to consider the usages established among civilized peoples, the laws of humanity, and the dictates of the public conscience as the ultimate law, this proof was furnished by the four Geneva Conventions of 1949. These codifications were made after World War II, and hence in full knowledge of modern guerilla warfare, and after the advent of atomic weapons. All of these Conventions, including notably those on Prisoners of War and on « The Protection of Civilians in Time of War », contain the Martens Clause — in fact, in a strengthened version.

The international instruments dealing with armed hostilities do not specifically mention anti-personnel fragmentation bombs, or deliberate transformation of entire populations into destitute refugees, or free-fire zones or electronic « beep-beep-boom-boom » operations. No international treaty or convention or Regulations have even *contemplated the possibility* of such phenomena. Yet, this does not put these phenomena outside the grasp and judgment of the law and conscience of the world. Clearly, various provisions of the Hague Regulations, the Geneva Conventions of 1949, and other treaties can be cited as prohibiting them. But, beyond that, those policies stand condemned because they offend elementary morality and are unbearable to the conscience of mankind. US Chief Justice Holmes defined law as follows :

« The law is the witness and external deposit of our moral life. Its history is the history of the moral development »

Conversely, this means that lawlessness testifies to a downward development of morality, and ultimately to the negation of morality. The fiendish methods used by the USA in Indochina threaten the very foundations and fabric of the international community.

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From its creation, the USA recognized the validity and importance of international morality. Its Declaration of Independence of 1776 opens with a reference to the requirement « of decent respect to the opinions of mankind ». Also in 1776, Virginia adopted its Bill of Rights, stating that free government can be preserved only by « firm adherence to justice, moderation... and virtue,

²⁷ *Deuxième conférence internationale de la paix*, 1907, La Haye, t. 1, p. 581.

and by frequent recurrence to the fundamental principles »²⁸. The American statesman Daniel Webster, in his famous oration of 1825 commemorating the American War of Revolution, exalted the « necessary respect for the judgment of the world », and « the scorching power of public reproach » that prevented even « the sternest authority » of the Holy Alliance from suppressing the Greek revolution through « pacification by force »²⁹. The US Government has often invoked the laws of humanity in demanding or criticizing certain behavior by another power. A well-known example is President Wilson's protest to Germany (1915) against the sinking of the British passenger ship *Lusitania* that cost over 100 American lives, as violating « the rights and principles of humanity ». Indignation in the USA over this offence against what he called the « high and sacred understandings of international law » contributed to the mood in the US for its eventual entry into the war against Germany³⁰. When, during World War I, Germany deported workers from occupied Belgium for forced labor, the USA joined in the worldwide protest against this policy as forbidden by the elementary laws of humanity — although the policy had been so much beyond the imagination of governments that it was not specifically forbidden by written or customary international law.

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The most basic international treaties on war make the laws of humanity and the dictates of the public conscience the guardians and arbiters of matters of gravest import. Those unwritten criteria have to apply exactly when the law needs support or clarification, or is silent.

This imposes a *great and continuous responsibility* upon humanity and the public conscience. For humanity and the public conscience have been given the right and the duty to *legislate*, to issue binding norms, on matters perhaps affecting millions of people and the existence of States. We see here virtually a delegation of legislative powers, in the technical sense of the term. The norms which, by this authority, are issued by humanity and the public conscience are binding, and governments and generals have to bow to them.

²⁸ Virginia's was the « most famous » of the Bills of Rights of the original 13 States of the USA. (H.S. Commager, ed., *Documents of American History*, 1941, p. 103.)

²⁹ Webster's Bunker Hill Orations, F.N. Scott, ed., 1905, p. 22. In his second, equally famous commemoration speech (1843), he spoke of

« ... the great truth... that... without unspotted purity of public faith, without sacred public principle, fidelity and honor, no mere forms of government... can give dignity to political society. » (*loc. cit.*, p. 58.)

³⁰ In his speech asking for Congressional declaration of war against Germany, Wilson alluded to the *Lusitania* case by accusing Germany of « throwing to the wind all *scruples of humanity* or of respect for the understandings that... underlie the intercourse of the world » (cited in Commager, p. 309).

The laws of humanity and the dictates of conscience are binding even if they are not « promulgated » loudly. The napalm-burned tongue speaks, though it cannot speak. To express this in cold legal : Unwritten norms such as « the laws of humanity » and « the dictates of the public conscience », are binding upon governments and individuals, by their very existence; they do not depend on, and may not always be amenable to, precise textualization.

And yet, those who still possess tongues must speak. One reason for this duty is to prevent any conceivable assumption that they have accepted the « inevitability » of the use of all technological potentialities in war.

It is in fact true that the laws of humanity and the dictates of the public conscience are not stable; they *do* undergo changes with changing *times*. But it is emphatically untrue that the demands of mankind are becoming *smaller*. Humanity does *not* acquiesce, and the public conscience does *not* relent under the impact of a value-blind technology and the monomaniac efforts of a science of death. On the contrary, this era of history is *more* demanding, *more* insistent on human rights, and *more full of loathing against war*, than any previous era.

The torment of Indochina is an affront to the soul and aspirations of our time. Humanity must speak, and the public conscience must forestall the advent of a world of electronic battlefields.

November 1971.